

Application No. 10/811,606
Amendment dated November 7, 2007
Reply to Final Office Action of September 11, 2007

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REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Final Office Action mailed on September 11, 2007, and the references cited therewith.

Claims 1, 10, and 16 are amended, claims 5 and 11 were previously canceled, and no claims are added; as a result, claims 1-4, 6-10, and 12-20 are now pending in this application.

Applicant respectfully submits that the amendments to claims 1, 10, and 16 do not introduce any new subject matter and support for the amendments can be found in Figures 2-7.

§ 102 Rejection of the Claims

Claims 1-4, 6, 10-12, 16 and 17 were rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,278,360 to Carbe et al. (hereinafter "Carbe"). Applicant respectfully traverses the rejection and addresses the rejection as follows.

Applicant respectfully submits that Carbe does not teach all the elements recited in claims 1, 10, and 16 as amended. For example, Carbe does not appear to teach an insert including an ear canal aperture adapted to communicate with the ear of a wearer, where the insert includes a surface surrounding the ear canal aperture defining a ridge, and a plurality of customizable caps each having an inner-cap surface to engage the ridge of the insert to releasably attach one of the customizable caps with the insert, as provided in claims 1, 10, and 16.

The Office Action states, "Into the ear canal aperture of insert 12 one inserts wax guard insert 14, corresponding to a 'cap covering the ear canal aperture.' It is noted that the cap 14 is replaceable (interchangeable). See column 3, lines 50-57." (Office Action mailed March 20, 2007, page 2). However, Carbe appears to describe a housing 12 with an internal passage 24 having an internal thread 26. Carbe also appears to describe a wax guard insert 14 (best shown in Figures 3 to 5) including an insert body 38 having a cylindrical portion and an outer disk-shaped flange 42. The cylindrical portion 40 of the insert 14 has an outer thread 44 which

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mates to the inner threads 26 of the housing 12. From this, it appears that Carbe describes an insert where the flange 42 is permanently affixed to the cylindrical portion, and/or an insert where the flange 42 and the cylindrical portion are formed into one single part.

However, Carbe does not appear to teach an insert including an ear canal aperture adapted to communicate with the ear of a wearer, where the insert includes a surface surrounding the ear canal aperture defining a ridge, and a plurality of customizable caps each having an inner-cap surface to engage the ridge of the insert to releasably attach one of the customizable caps with the insert. Rather, Carbe appears to describe an insert where the entire insert 14 would have to be removed to clean and/or replace the insert 14. In addition, Carbe does not appear to teach that the flange is customizable since the flange appears to be permanently affixed and/or formed of the same part of the cylindrical portion of the insert. Therefore a user and/or treatment professional does not appear to have the ability to change the cap and a cerumen-trapping accessory relative to each other and independent of changing the cylindrical portion using the insert 14 as described in Carbe.

Based on the foregoing, Applicant respectfully submits that Carbe does contain each and every element and limitation of independent claims 1, 10, and 16, as amended. As such, Applicant respectfully submits that Carbe does not support a 102(b) rejection of claims 1, 10, and 16. Applicant respectfully requests reconsideration and withdrawal of the 102(b) rejection for independent claims 1, 10, and 16, as well as those claims that depend therefrom.

§ 103 Rejection of the Claims

Claims 7-9, 13-15 and 18-20 were rejected under 35 USC § 103(a) as being unpatentable over Carbe in view of U.S. Patent No. 4,987,597 to Haertl (hereinafter "Haertl"). Applicant respectfully traverses the rejection as follows.

Claims 7-9, 13-15, and 18-20 depend from independent claims 1, 10, and 16, respectively, which are in condition for allowance for at least the reasons stated above. That is, Carbe does not teach each and every element contained in

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Applicant's independent claims 1, 10, and 16. The Haertl reference does not cure the deficiencies of Carbe. For example, Haertl does not describe, teach, or suggest, independently or in combination, an insert including an ear canal aperture adapted to communicate with the ear of a wearer, where the insert includes a surface surrounding the ear canal aperture defining a ridge, and a plurality of customizable caps each having an inner-cap surface to engage the ridge of the insert to releasably attach one of the customizable caps with the insert, as provided in claims 1, 10, and 16 as amended.

As such, Applicant respectfully submits that each and every element and limitation of independent claims 1, 10, and 16 as amended are not taught or suggested by Haertl and Carbe, either individually or in combination. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejection of dependent claims 7-9, 13-15, and 18-20.

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Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 236-0122 to facilitate prosecution of this matter.

CERTIFICATE UNDER 37 C.F.R. 81.8: The undersigned hereby certifies that this correspondence is being transmitted to the United States Patent Office facsimile number (571) 273-8300 on November 7, 2007

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